

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket No. 94-129

ONE CALL COMMUNICATIONS, INC.)
d/b/a OPTICOM)
)
Petition for Waiver of PIC Change)
Authorization and Verification Requirements,)
47 C.F.R. Sections 64.1100-64.1190)

**REPLY IN SUPPORT OF PETITION FOR
EMERGENCY WAIVER AND REQUEST FOR EXPEDITED TREATMENT**

One Call Communications, Inc. d/b/a Opticom ("One Call"), hereby replies to the sole opposition, filed by Bell Atlantic,¹ to its request for a waiver of the Commission's primary interexchange carrier ("PIC") change authorization and verification requirements ("PIC Change Rules").² In its Petition for Emergency Waiver and Request for Expedited Treatment ("Petition"), One Call sought a waiver of those requirements in order to allow the customers of Cleartel Communications, Inc. ("Cleartel") to enjoy uninterrupted service following the transfer of Cleartel's customer contracts to One Call pursuant to a Purchase Agreement and Agreement of Merger.

One Call requested relief within one month in order to permit it to become the primary carrier for those Cleartel customers it is unable to identify or contact prior to the transfer of service, without obtaining the customers' prior authorizations. One Call pointed out that the Commission recently has granted similar waivers of the PIC Change Rules under similar

¹ Opposition of Bell Atlantic, *ONE CALL COMMUNICATIONS, INC. d/b/a OPTICOM, Petition for Waiver of PIC Change Authorization and Verification Requirements*, 47 C.F.R. Sections 64.1100-64.1190 (Mar. 9, 2000) ("Bell Atlantic Opp.").

² 47 C.F.R. §§ 64.1100 - 64.1190 ("PIC Change Rules").

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circumstances in order to allow the seamless transition of customers in a timely fashion without a disruption in service, citing relevant cases.³

In its opposition, Bell Atlantic does not contradict the essential factual and legal basis for One Call's Petition. Instead, it attempts to drag in an unrelated dispute with One Call in an effort to depict One Call as having "unclean hands" and therefore being undeserving of waiver relief. Bell Atlantic complains that One Call has not paid payphone compensation to Bell Atlantic on long distance calls made from other Bell Atlantic payphones that are routed to One Call. It alleges that although it has tried to resolve this dispute, One Call has thus far refused. Bell Atlantic's arguments are both factually incorrect and irrelevant to One Call's Petition.

I. BELL ATLANTIC IS WRONG ON THE FACTS UNDERLYING ITS CLAIM

In support of its payphone compensation claim, Bell Atlantic quotes Section 64.1300(a) of the Commission's Rules,⁴ providing in part that "every carrier to whom a completed call from a payphone is routed shall compensate the payphone service provider...." The key word here is "completed." As Bell Atlantic well knows, One Call disputes Bell Atlantic's arbitrary criterion for determining whether a call from a Bell Atlantic payphone is completed, namely, the assumption that every call that lasts at least 25 seconds has been completed. One Call's records show that many of the calls it carries as the "0+" PIC at local exchange carrier ("LEC")

³ See, e.g., *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, International Exchange Communications, Inc. Request for Waiver*, Order, CC Docket No. 94-129, DA 99-1819 (Sept. 10, 1999) (finding that waiver of carrier change rules is warranted where carrier's customer accounts will be purchased by another carrier); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, MCI Worldcom, Inc. Request for Waiver*, CC Docket No. 94-129, DA 99-1549 (Aug. 6, 1999) (same); and *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Startec Global Operating and PCI Communication, Inc. Request for Waiver*, Order, CC Docket No. 94-129, DA 99-1461 (July 23, 1999) (same) ("Waiver Cases").

⁴ 47 C.F.R. § 64.1300(a).

payphones take over one minute to set up and complete and that significantly less than half of all of its 0+ long distance calls from payphones -- which include collect calls -- are actually completed. The amount that Bell Atlantic claims is due and owing thus is based on a much higher completion rate than is actually the case with One Call's 0+ calls and accordingly vastly overstates the actual compensation owed by One Call.

In One Call's experience, however, such payphone compensation issues involving LECs and other payphone providers have usually been resolved in a satisfactory manner once technical personnel are involved in the discussions. If Bell Atlantic is willing to have such discussions and authorizes knowledgeable personnel to participate, this dispute should be resolved in short order. In any event, as discussed below, such parochial, technical disputes have no place in the Commission's review of an unrelated waiver request affecting tens of thousands of residential and business telephone subscribers nationwide and payphones in other regions.

II. BELL ATLANTIC'S PAYPHONE COMPENSATION CLAIM IS IRRELEVANT TO ONE CALL'S WAIVER REQUEST

There is no more logical nexus between One Call's request for waiver of the PIC Change Rules and Bell Atlantic's payphone compensation claim than there would be between such a waiver request and a claim that One Call had not paid some other alleged debt. The Commission accordingly should ignore Bell Atlantic's irrelevant claim in reviewing One Call's waiver request.

Bell Atlantic tries to connect the two issues by arguing that the requested waiver would enable One Call to add to the category of payphones for which Bell Atlantic is not receiving payphone compensation, thereby inflicting greater harm on Bell Atlantic. That supposed link is undermined, however, by Bell Atlantic's fallback request that the Commission condition any waiver on the "immediate[]" payment by One Call of "all the per-call compensation owed" for

the payphones presubscribed to One Call “and the Cleartel payphones being transferred to it.”⁵

If payphone compensation has not been paid by Cleartel and is now due and owing as to payphones being transferred to One Call, as the quoted phrase suggests, it is not clear why Bell Atlantic's similar dispute with One Call as to other payphones should provide any rationale to deny this waiver request and disrupt service to the customers involved.

The supposed link between the two issues is also undermined by the overbreadth of Bell Atlantic's demand that the waiver be denied *in toto*. Bell Atlantic states that its interest is simply in being paid the payphone compensation it is owed, but it would have the Commission deny the waiver as to all of the customers being transferred by Cleartel to One Call nationwide -- a far broader group than just those Cleartel aggregator customers with Bell Atlantic payphones. In fact, most of the Cleartel customers being transferred to One Call are residential and business “1+” presubscribed customers; payphones constitute a relatively small subset of the accounts to be transferred. Bell Atlantic would have the Commission potentially disrupt the long distance service of all of the residential and business customers nationwide and payphone aggregators in other regions being transferred to One Call in order to provide Bell Atlantic some leverage as to its payphones. That is hardly the type of public interest calculus that should defeat a waiver request.

Moreover, Bell Atlantic is not even the sole “customer” as to such payphones, in that it does not have the main role in selecting the PIC; in the case of LEC payphones, the location provider selects the PIC, in conjunction with the LEC payphone operations.⁶ Thus, Bell Atlantic is interposing itself in a matter -- the operation of the rules pertaining to the selection of a PIC -- as to which the location providers for the Bell Atlantic payphones have the primary

⁵ Bell Atlantic Opp. at 3.

⁶ See 47 U.S.C. § 276(b)(1)(D).


responsibility and interest. Bell Atlantic asserts that it has established procedures for continuing service when an interexchange carrier (IXC) goes out of business or otherwise decides to stop serving a payphone, which include allowing the location provider to select a new PIC. Those provisions, however, do not offer the location provider anything more than the rights that the location provider already enjoys, and which are acknowledged in One Call's notice to all customers, a copy of which is attached to its Petition. Accordingly, Bell Atlantic has shown no reason why its irrelevant claim should play any role in the Commission's review of a request to waive the PIC Change Rules.

CONCLUSION

For all of the reasons stated above and in its Petition, One Call respectfully requests that the Commission grant, on an expedited basis, a waiver of the PIC Change Rules to permit One Call to become the preferred carrier for those Cleartel customers it has been unable to identify or contact prior to the transfer of service, without obtaining the customers' prior authorizations and

verifications. Bell Atlantic has demonstrated no reason to delay such relief on account of its ongoing and unrelated payphone compensation dispute with One Call.

Respectfully submitted,


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Counsel for One Call Communications, Inc.

Dated: March 16, 2000

CERTIFICATE OF SERVICE

I, James S. Bucholz, do hereby certify that the foregoing **REPLY IN SUPPORT OF AMENDED PETITION FOR EMERGENCY WAIVER AND REQUEST FOR EXPEDITED TREATMENT** was delivered, via messenger on this 16th day of March, 2000, to the following:

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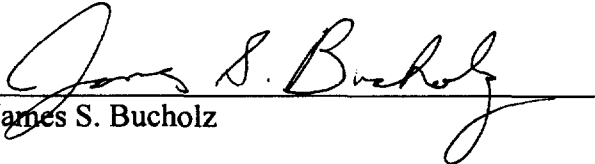
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